BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

RUBY J. HARRIS	)	
Claimant	)	
VS.	)	
	)	Docket No. 192,586
DAVOL, INC.	)	
Respondent	)	
AND	)	
	)	
LUMBERMENS MUTUAL CASUALTY COMPANY	)	
Insurance Carrier	)	

ORDER

Respondent appeals from a Preliminary Hearing Order of the Honorable Floyd V. Palmer dated December 29, 1994, wherein the Administrative Law Judge granted claimant temporary total disability compensation commencing July 1, 1994, through December 4, 1994, and ordered medical treatment be provided by the respondent on claimant's behalf. Respondent contends claimant's injury and disability did not arise out of and in the course of her employment with respondent.

ISSUES

Whether claimant met with personal injury by accident arising out of and in the course of her employment with respondent on the date alleged.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board finds claimant has proven by a preponderance of the credible evidence, that she suffered accidental injury arising out of and in the course of her employment with respondent on the date alleged. On the date of injury, while washing small silicone bottles for the respondent, claimant attempted to catch a bottle as it fell to the floor. While turning fast and reaching down, claimant felt a crack in her hip and experienced an immediate onset of pain. Claimant spent the remainder of the day working in pain. The following day claimant reported her injury to her employer and was referred to Dr. Gravino, the company doctor. An accident report was filled out on July 5, 1994.

Claimant underwent a series of treatments with Dr. Gravino, and, after a referral to Dr. Bailey, underwent epidural injections which provided no relief. Dr. Bailey then recommended a CAT scan which the insurance company objected to. Claimant also went to Dr. Sciara, her family doctor, on her own.

The medical information in evidence is somewhat conflicting in that Dr. Gravino found claimant's condition to be most likely a result of a degenerative process resulting from the claimant's natural aging process. He did say that but for her pre-existing condition, claimant probably or most likely would not have suffered the possible aggravation of her pre-existing condition. While a portion of this medical report indicates this is a form of natural aging process, Dr. Gravino indicates that this was an on-the-job aggravation of a pre-existing condition and thus work related. Dr. Sciara opined claimant had suffered injuries while working. He could find no pre-existing problems here which substantially caused claimant's ongoing problems.

Dr. Bailey found mild degenerative changes and a possible lumbar disc or nerve root irritation and opined that it had occurred when claimant had bent over to pick up the bottle at work.

Whether an accident arises out of and in the course of the worker's employment depends upon the facts peculiar to the particular case. Messenger v. Sage Drilling Co., 9 Kan. App. 2d 435, 680 P.2d 556, rev. denied 235 Kan. 1042 (1984). An injury arises "out of" employment if it arises out of the nature, conditions, obligations, and incidents of the employment. Martin v. U.S.D. No. 233, 5 Kan. App. 2d 298, 615 P.2d 168 (1980); Hensley v. Carl Graham Glass, 226 Kan. 256, 597 P.2d 641 (1979).

The Appeals Board has held in the past that the 1993 amendments to K.S.A. 44-508(e) were intended as a codification of the Supreme Court's holding in Boeckmann v. Goodyear Tire & Rubber Co., 210 Kan. 733, 504 P.2d 625 (1972). In Boeckmann, the Court held that everyday bodily motions required by a claimant's work which gradually and imperceptibly erode the physical fibers of claimant's structure would not be compensable where it is clear any movement on or off the job would cause the injury. In Boeckmann, the Court found that the claimant's condition was not traumatically induced and that no relationship existed between the aggravation and the employment as the claimant's condition was insidious and persistent in that it got worse all the time regardless of what claimant was doing.

In this matter, the sudden and traumatic onset of pain suffered by claimant would not constitute an insidious and persistent condition, worsening regardless of what claimant was doing. It was a sudden and unexpected trauma.

K.S.A. 44-508(d) defines accident as ". . . an undesigned, sudden and unexpected event or events, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. The elements of an accident, as stated herein, are not to be construed in a strict and literal sense, but in a manner designed to effectuate the purpose of the workers compensation act that the employer bear the expense of accidental injury to a worker caused by the employment."

In this instance, the claimant was on the job site performing her required job tasks when she suffered a sudden and traumatic injury. Her injury was directly related to the

physical activities required by her job. The Appeals Board finds that the claimant's accidental injury did arise out of and in the course of her employment with respondent.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Floyd V. Palmer dated December 29, 1994, shall be and is affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of March, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Sally G. Kelsey, Lawrence, KS
Mark E. Kolich, Kansas City, KS
Floyd V. Palmer, Administrative Law Judge
George Gomez, Director